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No. [redacted]

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1969

GEORGE W. CHAPMAN, INC.,

Petitioner

v.

ROBERT E. SHENK,
BANK OF CLARKE COUNTY,

Respondents

In the Matter of George W. Chapman, Inc., debtor

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

HARRY MARFUT
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Arlington, Va. 22201
Counsel for Petitioner

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No.

GEORGE W. CHAPMAN, INC.,

Petitioner

v.

ROBERT E. SHENK,
BANK OF CLARKE COUNTY,

Respondents

In the Matter of George W. Chapman, Inc., debtor

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

George W. Chapman, Inc., the petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above entitled case on ~~May~~ JAN 10, 1969.

OPINION BELOW

The opinion and judgment of the United States Court of Appeals for the Fourth Circuit are unreported and are printed in Appendix A hereto, infra, page 11. The Order of the United States District Court for the Western District of Virginia is printed in Appendix A hereto, infra, page 12. The Report of the Referee in Bankruptcy and Special Master is printed in Appendix A hereto, infra, page 13.

JURISIDCTION

The judgment of the United States Court of Appeals was entered on ~~May~~ JAN 10, 1969, infra, Appendix A, page 11. A letter of the Court, dated January 28, 1969, infra, Appendix A, page 16, further advised that no further action is required and that the Order filed January 10, 1969 dismissing the appeal remains in force. A supplemental letter dated January 29, 1969, infra, Appendix A, page 17, alerted petitioner to the Rules of Appellate Procedure governing an application to the Supreme Court of the United States for a writ of certiorari.

The jurisdiction of the Court is invoked under the Bankruptcy Act, § 24(c), Title 11 U.S.C. § 47(c).

Order Staying Mandate issued March 13, 1969, granting a stay pending application of the petitioner to the Supreme Court of the United States for a writ of certiorari within the time permitted by law, infra, Appendix A, page 18.

Order extending time within which to file a petition for a writ of certiorari was signed by the Chief Justice of the United States on April 10, 1969 extending the time to and including June 9, 1969, infra, Appendix A, page 19.

QUESTION PRESENTED

Whether the United States Court of Appeals for the Fourth Circuit erred in dismissing petitioner's appeal, citing Rule 26(b), Federal Rules of Appellate Procedure: "Upon consideration of appellant's [petitioner's] motion for an extension of two weeks to file its Petition for Appeal, and the appellees' [respondents'] motion to dismiss the appeal."

STATUTES INVOLVED

The Bankruptcy Act

§ 24 Sub a, Title 11, U.S.C.A. § 47.

(a) The United States courts of appeals, in vacation, in chambers, and during their respective terms, as now or as they be hereafter held, are invested with appellate jurisdiction from the several courts of bankruptcy in their respective jurisdictions in proceedings in bankruptcy, either interlocutory or final, and in controversies arising in proceedings in bankruptcy, to review, affirm, revise, or reverse, both in matters of law and in matters of fact: *Provided, however,* That the jurisdiction upon appeal from a judgment on a verdict rendered by a jury shall extend to matters of law only: *And provided further,* That when any order, decree, or judgment involves less than $500, an appeal therefrom may be taken only upon allowance of the appellate court.

(b) Such appellate jurisdiction shall be exercised by appeal and in the form and manner of an appeal.

(c) The Supreme Court of the United States is vested with jurisdiction to review judgments, decrees, and orders of the United States courts of appeals in proceedings under this title in accordance with the provisions of the laws of the United States now in force or such as may hereafter be enacted, July 1, 1898, c. 541 § 24, 30 Stat. 553; May 27, 1926, c. 406 § 9, 44 Stat. 664; June 7, 1934, c. 426, 48 Stat. 926; June 22, 1938, 575 § 1, 52 Stat. 854; June 25, 1948, c. 646 § 39, 62 Stat. 992; July 7, 1952, c. 579 § 9, 66 Stat. 423.

Federal Rules of Appellate Procedure, 28 U.S.C.A., Effective July 1, 1968 (Cited herein as F. R. A. P.)

Rule 3. Appeal as of Right—How Taken.

(a) FILING THE NOTICE OF APPEAL. An appeal permitted by law as of right from a district court shall be taken by

filing a notice of appeal with the clerk of the district court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the court of appeal deems appropriate, which may include dismissal of the appeal. Appeals by permission under 28 U.S.C. § 1292(b) and appeals by allowance in bankruptcy shall be taken in the manner prescribed by Rule 5 and Rule 6 respectively.

Rule 6. Appeals by Allowance in Bankruptcy Proceedings.

(a) PETITION FOR ALLOWANCE. Allowance of an appeal under section 24 of the Bankruptcy Act (11 U.S.C. § 47) from orders, decrees, or judgments of a district court involving less than $500, or from an order making or refusing to make allowances of compensation or reimbursement under sections 250 or 498 thereof (11 U.S.C. § 650, § 898) shall be sought by filing a petition for allowance with the clerk of the court of appeals within the time provided by Rule 4(a) for filing a notice of appeal, with proof of service on all parties to the action in the district court. A notice of appeal need not be filed.

Rule 26. Computation and Extension of Time.

(b) ENLARGEMENT OF TIME. The court for good cause shown may upon motion enlarge the time prescribed by these rules by its order for doing any act, or may permit an act to be done after the expiration of such time; but the court may not enlarge the time for filing a notice of appeal, a petition for allowance, or a petition for permission to appeal. Nor may the court enlarge the time prescribed by law for filing a petition to enjoin, set aside, suspend, modify, enforce or otherwise review, or a notice of appeal from, an order of an administrative agency, board, commission or officer of the United States, except as specifically authorized by law.

Rule 27. Motions.

(a) CONTENT OF MOTIONS: RESPONSE: REPLY. Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order (for which see subdivision (b)) within 7 days after service of the motion, but motions authorized by Rules 8, 9, 18 and 41 may be acted upon after reasonable notice and the court may shorten or extend the time for responding to any motion.

(b) DETERMINATION OF MOTIONS FOR PROCEDURAL ORDERS. Notwithstanding the provision of the preceding paragraph as to motions generally, motions for procedural orders, including any motions under Rule 26(b) may be acted upon at any time, without awaiting a response thereto. Any party adversely affected by such motion may request reconsideration, vacation or modification of such action.

STATEMENT OF THE CASE

On August 22, 1968 petitioner (appellant below) filed a timely Notice of Appeal, (R. Vol. I, 46),* as a matter of right, from the Final Order of the United States District Court for the Western District of Virginia, at Harrisonburg, dated July 25, 1968, dismissing petitioner's petition for Reorganization of a Corporation under Chapter X of the Bankruptcy Act, (R. Vol. I, 1).

---

*The Record was prepared in two volumes, a supplement, and a second supplement.

On September 23, 1968, the Honorable Samuel W. Phillips, Clerk of the United States Court of Appeals for the Fourth Circuit, acknowledged by letter to all counsel involved, infra, Appendix B, page 20, that he received the record on appeal from the District Court and that he filed the record and docketed the appeal. He further advised counsel in this letter that the appellant (petitioner here) had until November 4, 1968 to file printed briefs, calling counsel's attention to the Federal Rules of Appellate Procedure, effective July 1, 1968.

On November 1, 1968 petitioner, by counsel, filed a Motion for an extension of two weeks from November 4, 1968 "to file the Petition for Appeal and present the record," which was received by the Court of Appeals on November 4, 1968, but not filed. (Second Supplement to Record) Thereupon, the Clerk of the Court, the Honorable Samuel W. Phillips, in a letter dated November 5, 1968, infra, Appendix B, page 21, advised petitioner's counsel of Rule 6(a), F. R. A. P., pertaining to a petition for an allowance of appeal in bankruptcy proceedings involving less than $500, and he further advised counsel that Rule 26(b), F.R.A.P., prohibits the enlargement of time for filing a petition for allowance of an appeal.

Also on November 5, 1968, respondents (appellees below) filed lengthy motions in response to petitioner's motion of November 1, 1968, each having two captions: one being a motion to deny the extension of time requested by petitioner to file a petition for appeal and to present the record, and the other being a motion to dismiss the appeal (Supplement to record, page 2 and page 11).

On December 10, 1968, the Clerk of the Court, the Honorable Samuel W. Phillips, addressed a letter to petitioner's counsel, infra, Appendix B, page 22, requesting a reply to the question of whether the amount in controversy was less than $500, indicating that there is no appeal as a matter of right in controversies involving less than $500, and further requesting petitioner's counsel to file motions

for leave to file responses to respondents' motions of November 5, 1958 to dismiss the appeal, if so desired.

On December 23, 1968 the Honorable Samuel W. Phillips again wrote to petitioner's counsel, indicating that he received no reply to his letter of December 10, 1968 and that no motion for leave to file responses to respondents' motions of November 5, 1968 were filed. He further informed petitioner's counsel that the motions were being transmitted to a panel in accordance with Local Rule 7, infra, Appendix B, page 24.

On December 26, 1968, by letter to the Honorable Samuel W. Phillips, petitioner asked that his counsel be formally withdrawn from the case, infra, Appendix B, page 25, and on December 30, 1968 it was ordered by the Court that he be allowed to withdraw, infra, Appendix B, page 26.

The judgment of the Circuit Court of Appeals for the Fourth Circuit was entered on January 10, 1969, and the appeal was ordered dismissed, infra, Appendix A, page 11.

REASONS FOR GRANTING THIS WRIT

Whether the Circuit Court of Appeals erred in dismissing petitioner's appeal, citing Rule 26(b), F.R.A.P., "Upon consideration of the appellant's [petitioner's] motion for an extension of two weeks to file its petition for appeal, and the appellees' [respondents'] motion to dismiss the appeal":

(1) Petitioner filed a timely Notice of Appeal *as a matter of right* in the District Court pursuant to Section 24 sub (a) of the Bankruptcy Act, 11 U.S.C.A. § 47(a) and Rule 3, F.R.A.P., from the final order of the District Court for the Western District of Virginia dismissing a Petition for the Reorganization of a Corporation under Chapter X of the Bankruptcy Act. No petition for appeal, or Petition for Allowance of Appeal, as described in Rules 6(a) and 26(b), F.R.A.P., was filed or required to be filed in this case, as the amount in controversy was not under $500.

(2) Petitioner's motion of November 1, 1968 for an extension of two weeks to file a Petition for Appeal (appar-

ently an error) should have been filed and acted upon without reference to the amount in controversy, since, on the one hand, if the amount had been under $500, the court was prohibited by Rule 26(b), F.R.A.P., from granting the extension of time asked for in the motion, and, on the other hand, if the amount had been $500 or more, the motion was unnecessary, as the appeal was already taken as a matter of right.

(3) Since this was a motion for a procedural order, the Court ought to have filed it and acted upon it promptly. Under Rule 27(b), F.R.A.P., the Court could have acted upon it even without waiting for a response from the adverse parties. Instead, it was not acted upon until January 10, 1969, over two months later, as a basis for dismissing the appeal.

(4) Having raised the question of the amount in controversy in the case, a jurisdictional question, the Court ought to have decided the question from an examination of the record. In *New York Credit Men's Association v. Brown*, 118 F.2d 6, 7 (1941), a case wherein the bankrupt paid its attorney $600 prior to the filing of the petition, but only $250 of it having been paid in "contemplation of filing the petition," the amount in controversy was reduced to less than $500. Holding that the amount in controversy must be decided by the Court, the Court stated at page 7 that:

> "Our jurisdiction depends upon how much the order of the district court 'involved'; if that was less than $500, it was necessary to obtain leave to appeal under the second proviso of § 24, Sub a, 11 U.S.C.A. § 47 Sub. a, and as no leave was granted we have no jurisdiction, a question we must decide, although the appellee has not raised it. If in the inquiry we are confined to the petition, answer and order of the referee, no leave was necessary; if on the other hand we are free to examine the evidence and the referee's finding, the order of the district court 'involved' less than $500, as has just appeared.

> We have been unable to find any decision upon the question under § 24, Sub. a—or under § 25, Sub. a (3), before 1938—*but during the period when the jurisdiction of the Supreme Court depended upon the amount in dispute it became well settled that the court would look to the record at large.* (Citations omitted.) *We think that the doctrine should be applied to § 24, sub a and that in order to determine our jurisdiction we must examine the whole record.*" (Emphasis supplied.)

(5) It appears, therefore, that since the judgment of the Court of Appeals was upon the consideration of the petitioner's motion, which had not been filed, and the respondents' motions to dismiss the appeal, rather than upon the examination of the whole record, it was error to dismiss the appeal pursuant to Rule 26(b), F.R.A.P.

(6) In accordance with Rule 3, F.R.A.P., the petitioner's inability to perfect its appeal within the time provided after the filing of a Notice of Appeal in the District Court did not affect the validity of the appeal or require the dismissal of the appeal.

(7) According to the decision in *Pyramid Motor Freight Corp. v. Ispass*, 330 U.S. 695, 67 S.Ct. 954, 93 L.Ed. 1184 (1941), the jurisdiction of the Court attached at the time of filing of the Notice of Appeal, and whether a dilatory appellant should be allowed to proceed is within the discretion of the Court. In that case, this Honorable Court affirmed the decision of the Court of Appeals, Second Circuit, allowing the appellant to docket the appeal and file the record on appeal more than 90 days after filing the Notice of Appeal. This decision was followed in *Glenn v. American Surety Co.*, 160 F.2d 977 (1947), wherein the United States entered the case as intervenor. Glenn filed the Notice of Appeal and the United States filed the record on appeal. The Court permitted a correction of the caption of the record and allowed it to be filed as Glenn's record out of time. And in the case of *Annie D. Winters v. Stephen Bradford Crowley, Jr.*, D.C. Cir. Ct. of Appeals,

374 F.2d 317 (1967), a case involving the custody of three children, the Circuit Court of Appeals allowed the filing of briefs more than one year after the Notice of Appeal was filed, reversing the D.C. Court of Appeals on the ground that it was an abuse of discretion not to allow the late filing of briefs in an important case.

(8) It appears, therefore, that since it was within the court's discretion to allow the appellant the additional time needed to perfect its appeal, it was error to dismiss the appeal on the jurisdictional grounds of Rule 26(b). The Court of Appeals had jurisdiction from the time of the filing of the Notice of Appeal.

(9) The motions of the respondents (appellees below) (Supplement to Record, page 2 and page 11), to deny the extension of time sought by petitioner, and to dismiss the appeal, considered by the Court in dismissing the appeal, did not conform to the requirements of Rule 27(a), F.R.A.P., in that they failed to state with particularity the grounds for the order or relief sought. Each motion contained two captions: one caption indicating a motion to deny the extension of time sought by the petitioner, and the other indicating a motion to dismiss the appeal. But the grounds stated were not divided between the motions, and it was virtually impossible to ascertain upon which grounds the one or the other motion was based. It was error, therefore, to dismiss the appeal upon the consideration and granting of such motions.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

HARRY MARFUT
2400 Wilson Boulevard
Suite 300
Arlington, Va. 22201

Counsel for Petitioner

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12,805

GEORGE W. CHAPMAN, INC.,
Appellant,

versus

ROBERT E. SHENK
BANK OF CLARKE COUNTY,
Appellees.

In the Matter of George W. Chapman, Inc., Debtor.

Appeal from the United States District Court for the Western District of Virginia, at Harrisonburg.
Ted Dalton, Chief Judge.

ORDER

[Filed: Jan. 10, 1969
Samuel W. Phillips, Clerk]

Upon consideration of the appellant's motion for an extension of two weeks to file its petition for appeal, and the appellees' motions to dismiss the appeal;

It appearing to the court that the appeal has not been timely perfected, and that an enlargement of time would not be appropriate, Rule 26(b), F.R.A.P.;

It is ADJUDGED and ORDERED that the appellant's motion is denied; the appellees' motions are granted, and this appeal is dismissed.

/s/ Clement F. Haynsworth, Jr.
Chief Judge, Fourth Circuit

/s/ J. Braxton Craven, Jr.
United States Circuit Judge

/s/ John D. Butzner, Jr.
United States Circuit Judge

A True Copy, Teste:

Samuel W. Phillips, Clerk
By /s/ Jo Ann Kirkpatrick
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

IN THE MATTER OF

George W. Chapman, Inc., Debtor

In Proceedings for Reorganization of a Corporation under Chapter X of the Bankruptcy Act, No. 68-BK-97-H

Upon the report and recommendation of Thomas J. Wilson, Referee in Bankruptcy and Special Master herein, dated the 26th day of June, 1968, it is ORDERED that the petition filed herein by George W. Chapman, Inc., the debtor, be, and the same hereby is, dismissed.

Copies of this order and said report are directed to Ronald L. Walutes, Esq., Gerald E. Williams, Esq., A.

Garland Williams, Esq., Bank of Clarke County, Robert E. Shenk, and George W. Chapman, Inc.

Dated this 25th day of July, 1968.

/s/ Ted Dalton
Chief United States District Judge

SEAL
A TRUE COPY, TESTE:
Leigh B. Hanes, Jr., Clerk
By: /s/ Daisy H. Nalle
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

IN THE MATTER OF

George W. Chapman, Inc., Debtor

In Proceedings for Reorganization of a Corporation under Chapter X of the Bankruptcy Act.
No. 68-BK-97-H

The undersigned, Thomas J. Wilson, Referee in Bankruptcy and Special Master in this proceeding, does hereby respectfully report unto the Court as follows:

The petition of George W. Chapman, Inc., was filed in the Harrisonburg Division of the United States District Court at 3:00 p.m. on April 25, 1968. That petition recited that certain real estate belonging to said corporation had been advertised for sale under a deed of trust foreclosure for Friday, April 26, 1968, at 11:00 a.m., said real estate being a lot with a dwelling house thereon and another tract improved with a service station.

As shown by the pleading filed by A. Garland Williams, Trustee under said deed of trust and attorney for the Bank of Clarke County and one Robert E. Shenk, said real estate was sold on April 26, 1968, to Robert E. Shenk and Bank

of Clarke County, respectively, and deeds to them were executed, delivered and recorded in the Clerk's Office of Clarke County, Virginia, on April 30, 1968.

No application for a stay of the pending foreclosure was made at the time of the filing of the petition or thereafter until May 3, 1968, when the said George W. Chapman, Inc., appeared by Ronald L. Walutes before the undersigned Referee and petitioned for an order requiring A. Garland Williams, Trustee, Bank of Clarke County, and Robert E. Shenk to appear and show cause why the aforesaid sale should not be vacated.

Pursuant to the show cause order entered by the Referee on May 3, 1968, the said A. Garland Williams, Trustee, Bank of Clarke County, and Robert E. Shenk, filed their motions to dismiss the show cause order and appeared in response thereto at Harrisonburg, Virginia, on May 15, 1968, at which time and place George W. Chapman, President of George W. Chapman, Inc., also appeared, evidence was adduced, and the matter was heard by the Referee, who makes the following findings.

At the time of the filing of the petition herein all of the outstanding and issued capital stock for this corporation was owned by George W. Chapman, the president of the corporation. The corporation employs one person, has some $5.00 cash on hand, and can hardly be said to be an operating corporation since its business at the time of the filing consisted of one contract for the installation of a septic system and making repairs to two other septic systems. The income of the business consisted of approximately $300.00 collected from accounts receivable after the filing of the petition and prior to the hearing of May 15, 1968.

The real estate sold under the deed of trust held by the Bank of Clarke County consisted of a dwelling house which was occupied by George W. Chapman, located in Berryville, Virginia, and a service station location which was not operating but used for the storage of certain equipment belonging to the corporation. The corporation also owned another

tract of approximately one and one-half acres with a sizable building on it which, likewise, was available for use for storage and maintenance of equipment.

Mr. George W. Chapman testified that the only creditor he was concerned with and the only one pressing him was the Bank, that being the Bank of Clarke County. He also testified that the only purpose of this proceedings was to avoid the foreclosure proceedings. The two pieces of real estate sold are certainly not indispensable to the operation of the corporation's business. The equity realized upon the foreclosure sale was less than the value placed thereon by the owner, which is not unusual. There has been no showing that the foreclosure sale was not regular in all respects, and the Referee is of the opinion it should not be disturbed.

It appears that this debtor desires a moratorium not a reorganization. On the circumstances in this case, the Referee and Special Master is not satisfied that the petition has been filed in good faith and recommends that the same be dismissed.

Dated this 26th day of June, 1968.

/s/ Thomas J. Wilson
Referee in Bankruptcy
and Special Master

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT

January 28, 1969

Mr. George W. Chapman
President
George W. Chapman, Inc.
Berryville, Virginia

No. 12,805, In Re: George W. Chapman, Inc., Appellant. In proceedings for Reorganization of a Corporation under Chapter X of the Bankruptcy Act.

Dear Mr. Chapman:

Your letter addressed to Samuel W. Phillips, Clerk, Fourth Circuit Court, United States Court of Appeals, has been received and placed before the Court.

I have been advised by the Court that no further action is required and that the order filed on January 10, 1969, dismissing this appeal remains in force.

Sincerely yours,

/s/ Samuel W. Phillips,
Clerk

SWP/jak
CERTIFIED MAIL

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT

January 29, 1969

Mr. George W. Chapman
President
George W. Chapman, Inc.
Berryville, Virginia

No. 12,805, In Re: George W. Chapman, Inc., Appellant.
In proceedings for Reorganization of a Corporation under Chapter X of the Bankruptcy Act.

Dear Mr. Chapman:

This will supplement my letter of January 28th to you.

Should you desire to appeal the order of this Court, you should be governed by Rule 41(b), Federal Rules of Appellate Procedure, Rule 13 and Rule 21, Rules of the Supreme Court of the United States, and Title 28, § 2101(c), United States Code Annotated. Rule 41 provides that a stay of the judgment of this Court pending application to the Supreme Court may be granted upon motion which must be made within thirty days after the judgment of this Court is filed (order filed on January 10, 1969). Rule 13 applies to the docketing of your case in the Supreme Court and Rule 21 explains how a writ of certiorari to the Supreme Court is sought. Section 2101(c) of Title 28, United States Code, provides that an appeal may be taken from a civil action in this Court to the Supreme Court within ninety days after entry of such judgment.

I suggest that you contact an attorney promptly if you intend to appeal the order of this Court. You should not rely upon the information in this letter to perfect your

appeal, as it is intended only to alert you to the complexity of perfecting an appeal to the Supreme Court.

Sincerely yours,

/s/ Samuel W. Phillips,
Clerk

SWP/jak
CERTIFIED MAIL

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12,805.

In Re:

George W. Chapman, Inc.
Appellant.

In proceedings for Reorganization of a Corporation under Chapter X of the Bankruptcy Act.

Appeal from the United States District Court for the Western District of Virginia, at Harrisonburg.

[Filed: March 13, 1969
Samuel W. Phillips, Clerk]

Upon motion of the appellant and for cause shown,

IT IS ORDERED that the order in the above case entered on January 10, 1969 be, and it is hereby, stayed pending application of the appellant in the Supreme Court of the United States for a writ of certiorari to this Court, provided

that the application is filed within the time permitted by law.

/s/ Clement F. Haynsworth, Jr.
Chief Judge

A True Copy, Teste:
Samuel W. Phillips, Clerk
By: /s/ Margaret P. Atkins
Deputy Clerk

Supreme Court of the United States

No. ___, October Term, 1968

GEORGE W. CHAPMAN, INC.,
Petitioner,

v.

ROBERT E. SHENK AND BANK OF CLARKE COUNTY

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including June 9th, 1969.

/s/ Earl Warren
Chief Justice of the United States.

Dated this 10th day of April, 1969.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT

September 23, 1968

Ronald L. Walutes, Esquire
Attorney at Law
Post Office Box 156
Alexandria, Virginia

Gerald E. Williams, Esquire
Attorney at Law
1400 North Uhle Street
Arlington, Va., 22201

A. Garland Williams, Esquire
Attorney at Law
Post Office Box 47
Berryville, Va., 22611

No. 12,805, In Re: George W. Chapman, Inc. (Bankruptcy No. 68-BK-97-H)

Gentlemen:

I received from the clerk of the United States District Court at Harrisonburg, Virginia, the record on appeal in the above-entitled case, and I filed the record and docketed the appeal. Enclosed is receipt for the docketing fee.

Also enclosed is order of appearance to be executed on behalf of the appellant and returned forthwith.

It cannot be determined at this time the date of argument. When the calendar is set, counsel will be advised amply in advance.

With respect to the filing and serving of briefs and the appendix, I call your attention to Rules 30 and 31 of the Federal Rules of Appellate procedure effective July 1, 1968.

Twenty-five copies of the appellant's printed brief and ten copies of the appendix should be served and filed in this office on or before November 4, 1968, and twenty-five copies of appellee's brief should be served and filed in this office within thirty days after service of the brief by the appellant.

Sincerely yours,

SAMUEL W. PHILLIPS, Clerk
By: /s/ Carol R. Lemon,
Chief Deputy Clerk

CRL:rwr
Encls.
cc: Thomas J. Wilson, Esq.
Referee in Bankruptcy
Post Office Box 586
Harrisonburg, Virginia 22801

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT

November 5, 1968

Gerald E. Williams, Esquire
Court Square West Building
1400 North Uhle Street
Arlington, Virginia 22201

No. 12,805, In Re: George W. Chapman, Inc., Appellant. In proceedings for Reorganization of a Corporation under Chapter X of the Bankruptcy Act.

Dear Mr. Williams:

Thank you for your letter of November 1, 1968, enclosing a motion for an extension of two weeks to file a petition for appeal. The motion has been stamped "received" and has not been filed.

Rule 6(a), Federal Rules of Appellate Procedure, provides that a petition for allowance of an appeal in bankruptcy

proceedings must be filed with the Clerk of the Court of Appeals within thirty days of the date of the entry of the order appealed from with proof of service on all parties to the action in the District Court. A notice of appeal need not be filed. See 11 U.S.C. § 47 and 11 U.S.C. § 650, § 898. Part (b) sets forth the content of the petition and Part (d) governs the filing of a bond for costs if the appeal is allowed.

Rule 26(b), Federal Rules of Appellate Procedure, prohibits the Court from enlarging the time for filing a petition for allowance. Copies of both rules are enclosed for your convenience.

Sincerely yours,

/s/ Samuel W. Phillips,
Clerk

SWP/jak
Enclosures
Copy to: A. Garland Williams, Esquire
16 North Church Street
Berryville, Virginia 22611

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT

December 10, 1968

Gerald E. Williams, Esq.
Court Square West Building
1400 North Uhle Street
Arlington, Virginia 22201

No. 12,805, George W. Chapman, Inc., Appellant.
In Proceedings for Reorganization of a Corporation under Chapter X of the Bankruptcy Act.

Dear Mr. Williams:

I have had no reply to my letter of November 5, 1968.

The rules mentioned in that letter may control your appeal.

§ 1291 of Title 28 U.S.C. gives this court jurisdiction of timely appeals from final decisions of the district courts in its circuit. Rule 6, Federal Rules of Appellate Procedure, governs appeals by allowance in bankruptcy proceedings. Where the amount in controversy is $500 or more, there is an appeal as a matter of right. Where the amount in controversy is less than $500 a petition for allowance of the appeal must be filed with the clerk of this court within thirty days of the date of the entry of the order appealed from with proof of service on all parties to the action in the district court. Since a dismissal order is an appealable order, it would appear that the question of "the amount in controversy" must be decided.

I would appreciate a prompt reply to this question with a copy to A. Garland Williams, Esq.

By letter dated November 5, 1968 motions by Robert E. Shenk, appellee, and Bank of Clarke County, appellee, to deny an extension of time to allow appellant to prepare a petition for appeal and to dismiss the appeal were transmitted to this court with copies served upon you by mail. Responses in opposition within seven days after service of these motions should have been filed by you if you felt they were necessary. Rule 27, Federal Rules of Appellate Procedure.

If you desire to file responses in opposition, I suggest that you file a motion for leave to do so within seven (7) days from the date of this letter along with your responses.

If I can be of any help to you or if you have any questions, please let me know.

Sincerely yours,

/s/ Samuel W. Phillips
Clerk

SWP/ipr

cc: Ronald L. Walutes, Esq.
718 Jefferson Street
Alexandria, Virginia 22314

A. Garland Williams, Esq.
16 North Church Street
Berryville, Virginia 22611

Hon. Leigh B. Hanes, Jr.
Clerk
United States District Court
Harrisonburg, Va.

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT

December 23, 1968

Gerald E. Williams, Esq.
Court Square West Building
1400 North Uhle Street
Arlington, Virginia 22201

No. 12,805, George W. Chapman, Inc., Appellant. In Proceedings for Reorganization of a Corporation under Chapter X of the Bankruptcy Act.

Dear Mr. Williams:

I have had no reply to my letters of November 5, 1968 and December 10, 1968 and assume that you do not desire to file responses in opposition to the motions to dismiss the appeal.

The motions are being transmitted to a panel of this court in conformance with Local Rule 7, supplementing the Federal Rules of Appellate Procedure.

Sincerely yours,

/s/ Samuel W. Phillips
Clerk

SWP/ipr
cc: Ronald L. Walutes, Esq.
718 Jefferson Street
Alexandria, Virginia 22314

A. Garland Williams, Esq.
16 North Church Street
Berryville, Virginia 22611

Hon. Leigh B. Hanes, Jr.
Clerk
United States District Court
Harrisonburg, Va.

George W. Chapman, Inc.
Berryville, Virginia
December 26, 1968

Samuel W. Phillips, Clerk
United States Court of Appeals
Fourth Circuit
Tenth and Main Streets
Richmond, Virginia 23219

Re: George W. Chapman, Inc.
No. 12,805

Dear Mr. Phillips:

Mr. Gerald E. Williams, is General Counsel for George W. Chapman, Inc. He entered his appearance as Counsel in the above matter at my request, even though he was and is not familiar with these type proceedings. Mr. Ronald L. Walutes is primary counsel.

Therefore, I have ask Mr. Williams to withdraw from the above matter and he has prepared an Order to that effect, which I have endorsed and am enclosing. Please send a copy of the Order to Mr. Williams after it has been signed.

Your assistance is appreciated.

Very truly yours,

George W. Chapman, Inc.

/s/ George W. Chapman,
President

Encl.s

UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT

No. 12,805.

In Re:
George W. Chapman, Inc.
Appellant.

In proceedings for Reorganization of a Corporation under Chapter X of the Bankruptcy Act.

Appeal from the United States District Court for the Western District of Virginia, at Harrisonburg.

[Filed: Dec. 30, 1968
Samuel W. Phillips, Clerk]

Upon motion of George W. Chapman, Inc., appellant, and for cause shown,

IT IS ORDERED that Gerald E. Williams be allowed to withdraw, and he is hereby withdrawn as counsel of record for the appellant, George W. Chapman, Inc., pursuant to Local Rule 5(a).

For the Court—by direction.

/s/ Samuel W. Phillips
Clerk

By: /s/ Carol R. Lemon
Chief Deputy Clerk

A True Copy, Teste:
Samuel W. Phillips, Clerk
By /s/ Margaret P. Atkins
Deputy Clerk